APPELLANT PRO SE:

EARL LEE RUSSELBURG
Carlisle, Indiana

APPELLEES PRO SE:

IVAN A. ARNAEZ
JOHN D. CLOUSE
Evansville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

EARL LEE RUSSELBURG,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 82A05-0611-CV-682
	)	
IVAN A. ARNAEZ and JOHN D. CLOUSE,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable Carl A. Heldt, Judge
Cause No. 82C01-0601-MI-33

June 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Earl Lee Russelburg appeals from the trial court's grant of summary judgment in favor of Ivan Arnaez and John Clouse. Russelburg raises a single issue for our review, namely, whether the trial court erred when it concluded as a matter of law that he did not have standing to sue Arnaez and Clouse for legal malpractice.

We reverse and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

In 1986, Russelburg was convicted of Criminal Recklessness, three counts of Attempted Murder, and Robbery following a jury trial. The trial court sentenced Russelburg to a total executed sentence of 146 years. On direct appeal, our supreme court affirmed his convictions and sentence. See Russelburg v. State, 529 N.E.2d 1193 (Ind. 1988).

On February 10, 2005, Russelburg retained the services of Arnaez and Clouse to file a motion to reduce sentence. Russelburg directed his attorney-in-fact, Greg Newswanger, to pay the retainer using Russelburg's funds. During a hearing on Russelburg's motion, the Prosecutor objected to the motion to reduce sentence, and the trial court denied the motion. On direct appeal, this court affirmed the denial of the motion to reduce sentence. See Russelburg v. State, No. 82A01-0504-CR-181 (Ind. Ct. App. October 20, 2005).

On January 18, 2006, Russelburg filed a complaint against Arnaez and Clouse alleging legal malpractice. Arnaez and Clouse filed a motion for summary judgment alleging that Russelburg did not pay his own attorney's fees and, therefore, that he did

not have standing to sue. The trial court granted the summary judgment motion in favor of Arnaez and Clouse. This appeal ensued.

DISCUSSION AND DECISION

When reviewing summary judgment, this court views the same matters and issues that were before the trial court and follows the same process. Estate of Taylor ex rel. Taylor v. Muncie Med. Investors, L.P., 727 N.E.2d 466, 469 (Ind. Ct. App. 2000), trans. denied. We construe all facts and reasonable inferences to be drawn from those facts in favor of the non-moving party. Jesse v. American Cmty. Mut. Ins. Co., 725 N.E.2d 420, 423 (Ind. Ct. App. 2000), trans. denied. Summary judgment is appropriate when the designated evidence demonstrates that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Ind. Trial Rule 56(C). The purpose of summary judgment is to terminate litigation about which there can be no material factual dispute and which can be resolved as a matter of law. Zawistoski v. Gene B. Glick Co., 727 N.E.2d 790, 792 (Ind. Ct. App. 2000). This court will affirm an order granting summary judgment on any legal basis supported by the designated evidence. Merrill v. Knauf, 771 N.E.2d 1258, 1264 (Ind. Ct. App. 2002), trans. denied.

Here, in their summary judgment motion, Arnaez and Clouse made a single assertion, namely, that Russelburg did not have standing to sue. Their entire legal argument in support of summary judgment consisted of the following:

> One undisputed issue in that [sic] Russelburg doesn't have a claim to assert.
>
> In the affidavit of defendant Clouse he demonstrates Russelburg paid no lawyer's fees. He thus has no claim or no cause of action.

> A cause of action or right to sue, does not accrue to a person who does not own it. Stanton v. Ash, 384 F.Supp. 625 (D.C. Ind. 1974).
>
> Only one with a personal stake in his litigation and who can show that he has suffered, or will suffer, a direct injury has standing to sue. State ex rel. Cittadine v. Ind. Dept. of Transport., 790 N.E.2d 978 (Ind. Ct. App. 2003)
>
> (Also see numerous cases cited in 1 West's Ind. Digest, Action 13, p. 156-159, 2005 Pocket Parts, 17-22.)

Appellant's App. at 44 (emphasis original).[1] But our review of the cited authorities provides no support for Arnaez and Clouse's argument. Indeed, we are not aware of any legal authority that would preclude standing for Russelburg under the circumstances present in this case.

Further, we note that there is no transcript of the hearing on the summary judgment motion. As such, we have no way of knowing whether Arnaez and Clouse made additional arguments in support of their summary judgment motion. Our review on appeal is limited to the record before us. Again, we are bound by the designated evidence, Merrill, 771 N.E.2d at 1264, which does not support the grant of summary judgment on any legal basis.

To prove a legal malpractice claim, a plaintiff-client must show (1) employment of an attorney (duty); (2) failure by the attorney to exercise ordinary skill and knowledge (breach); (3) proximate cause (causation); and (4) loss to the plaintiff (damages). Douglas v. Monroe, 743 N.E.2d 1181, 1184 (Ind. Ct. App. 2001). Here, in essence, Arnaez and Clouse contend that they have no duty to Russelburg because he did not pay

[1] Arnaez and Clouse filed a Response to Plaintiff's Objection to Defendants' Motion for Summary Judgment. But that pleading does not contain either cogent argument or citation to legal precedent.

them for their services. But there is no dispute that Arnaez and Clouse had an attorney-client relationship with Russelburg, so that claim must fail. In the alternative, if Arnaez and Clouse contend that Russelburg has not sustained any damages because he did not pay for their services, that claim also fails. The undisputed evidence shows that Russelburg's attorney-in-fact used Russelburg's funds to pay Arnaez and Clouse.[2] That agency relationship does not defeat the requisite showing of damages.

We cannot say that Arnaez and Clouse might not be entitled to summary judgment on other grounds, but on the record before us, where Arnaez and Clouse made a single legal argument based on standing, we must reverse the trial court's entry of summary judgment in their favor. The undisputed evidence shows both the existence of an attorney-client relationship and that Russelburg paid for Arnaez and Clouse's legal services. Russelburg had standing to bring his legal malpractice suit as a matter of law.

Reversed and remanded for further proceedings.

RILEY, J., and BARNES, J., concur.

[2] Arnaez and Clouse make a vague argument that Russelburg's affidavit fails in certain respects. But nothing in the record shows that Arnaez and Clouse moved the trial court to strike the affidavit or otherwise challenged the validity of the affidavit to the trial court. As such, the issue is waived. Regardless, our review of both the affidavit and the power of attorney support Russelburg's contention on the issue of who paid the attorney's fees. First, even assuming that portions of Russelburg's affidavit do not comply with Trial Rule 56, those portions that do comply show that Russelburg paid his attorney's fees, albeit indirectly. Second, Arnaez and Clouse appear to suggest that only Russelburg's attorney-in-fact has standing to sue, but that is incorrect as a matter of law since the attorney-in-fact has no attorney-client relationship to Arnaez and Clouse.